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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-191-10 et seq.
Regulation title	Background Checks for Child Welfare Agencies
Action title	Repeal Regulation and Promulgate New Regulation
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action will repeal 22 VAC 40-190-10 et seq. and replace it with a new regulation, 22 VAC 40-191-10 et seq. The current background checks regulations went back into effect on May 18, 2000, at the end of effective dates for an emergency regulation resulting from passage of SB 419 and HB 1388 during the 1998 session of the General Assembly. This proposed regulation incorporates relevant Code of Virginia (Code) changes from 1995 to the present time, including recodification of Title 63.1 of the Code during the 2002 session of the General Assembly. It adds sections, reorganizes content, uses more descriptive headings, and increases use of the active voice to increase clarity of the regulation. It responds to questions and comments about background checks and incorporates a response to questions raised during review of a previous proposed regulation, with the same VAC Chapter number, that was subsequently withdrawn.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved the final action for Background Checks for Child Welfare Agencies on October 22, 2003.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code, at § 63.2-217, requires the State Board of Social Services (Board) to adopt regulations that are necessary or desirable to carry out Title 63.2. The Board has the statutory authority to promulgate this regulation based on these Code sections: 63.2-1704, 63.2-1719, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, 63.2-1724, and 63.2-1727. These Code sections establish background checks and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect. The regulation is necessary to implement the required Code provisions.

Section 63.2-1704 applies to voluntary registration of family day homes. Section 63.2-1719 provides definitions for all entities covered by Chapter 17 – Licensure. Section 63.2-1720 applies to compensated employment and use of volunteers. Section 63.2-1721 applies to background checks upon application for licensure or registration and to background checks of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems. Section 63.2-1722 applies to revocations and denial of renewal. Section 63.2-1723 applies to the waiver of certain criminal convictions. Section 63.2-1724 applies to record checks by unlicensed child day centers. Section 63.2-1727 applies to the prohibition of sex offenders or child abusers from operating or residing in family day homes.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The major purpose of the replacement regulation is to incorporate relevant changes in the Code since 1995. The other major purpose is to strengthen the regulation by addressing issues that have been raised during the past several years and by reorganizing and adding sections to make it more functional.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The primary Code of Virginia changes reflected in the proposed regulation are:

1. Expanding the list of crimes that are barriers to operating, working or volunteering at a child welfare agency;
2. Including prior adult convictions, and certain juvenile convictions and adjudications of delinquency as offenses;
3. Making consistent for all child welfare agencies the disqualification for other felonies that are not barrier crimes, unless five years have elapsed since conviction;
4. Clarifying that manslaughter is a barrier crime;
5. Mandating the search of the child abuse central registry;
6. Adding a founded complaint of child abuse or neglect as a prohibition to: a) operating or residing in a family day home, b) licensure, c) registration, d) approval, e) employment, f) volunteering , or g) being an applicant or agent;
7. Requiring that a person denied approval or employment due to a founded complaint of child abuse or neglect be given a copy of the report;
8. Establishing a waiver of disqualification due to certain criminal convictions, as identified in Title 63.2 at 63.2-1723 [eligibility and application requirements, change in waiver application fee, review criteria, decision process, modification requirements, public notification requirements];
9. Introducing the phrase "background checks" to mean sworn statement or affirmation, criminal history record check, and search of the central registry;
10. Introducing and defining the term "offense";
11. Clarifying that family day homes approved by family day systems and foster and adoptive homes approved by child-placing agencies, and religious exempt child day centers, are subject to the provisions of Title 63.2, Subtitle IV, Chapter 17, Article 3 – Background Checks;
12. Limiting volunteers required to obtain background checks to those who will be alone with any child in the performance of their duties;
13. Limiting employees required to obtain background checks to those involved in the day-to-day operation of such agency or who are alone with, in control of, or supervising one or more children;
14. Clarifying that background checks requirements of those children's residential facilities, previously referred to as child-caring institutions, are now found in another section of the Code;
15. Deleting the requirement that board members, upon application for licensure or registration, must obtain background checks unless the board member functions in another capacity that requires the checks;
16. Clarifying that only the applicants of child welfare agencies and those persons who are agents at the time of application must have the background checks completed prior to being involved in the day-to-day operations of the child welfare agency or being alone with, in control of, or supervising one or more of the children;
17. Changing the time period for obtaining criminal history record check records and central registry findings from 21 to within 30 days;

18. Clarifying that there is no penalty if the child welfare agency has applied for a background check timely and it has not been obtained due to administrative delay;

Other changes include additions that further explain the background checks process. Among these are:

1. Having a separate regulation for licensed child day centers;
2. Adding sections describing who isn't covered by the regulation; explaining requirements for satisfactory background checks; explaining the consequences of unsatisfactory background checks findings; describing the waiver of criminal conviction; identifying who may apply for a waiver; explaining how to apply for a waiver; describing the waiver evaluation criteria; describing the process for modifying, revoking, and terminating waivers; and explaining the waiver public notification requirements;
3. Requiring all adults residing in family day homes, licensed independent foster homes, foster homes approved by child-placing agencies, and homes of applicants to be adoptive parents approved by child-placing agencies (until the adoption is final) to furnish background checks; and
4. Requiring all persons 14 years of age and older to request a search of the central registry if residing in family day homes, licensed independent foster homes, foster homes approved by child-placing agencies, and homes of applicants to be adoptive parents approved by child-placing agencies (until the adoption is final) to furnish central registry findings. unless the person is placed in a foster home by a child-placing agency.

There are also content changes that reflect current practice or are responsive to questions from the public and facilities. These include, but are not limited to:

1. Allowing satisfactory background checks for contract employees to be accepted if dated less than six months prior to when the contract agencies begin to provide services at facilities;
2. Accepting a copy of the central registry finding;
3. Providing that a background check remains valid at a facility as long as no more than 12 months have passed from when the person began a leave of absence, was terminated from employment from the facility, or was transferred to a center owned and operated by the same employer or entity;
4. Allowing a person who leaves a facility to take the criminal history record report or central registry finding, if the report or finding is less than 91 days old, and if the facility keeps a copy of any report that was taken and writes on the copy of the report that it is a copy;
5. Requiring background checks every three years for a volunteer, employee and person living in a regulated home. Providing a phase-in for repeat checks. Exception: A volunteer, employee, or person living in a voluntarily registered family day home must obtain background checks every two years;
6. Clarifying that the Department, registering, approving, or other licensing authority has the right to revoke or deny licensure, registration, or approval based on background checks results or failure to obtain background checks;
7. Explaining that an employee or volunteer may continue to work or provide services if the criminal history record request or request for search of the central registry was submitted within seven calendar days of the person beginning employment or volunteer service, but the report is not returned within 30 calendar days;

8. Providing that the Department, registering, approving, or other licensing authority, may require a new background check relevant to a suspicion of a barrier crime conviction, a felony conviction, or a founded complaint of child abuse and neglect;
9. Allowing satisfactory background checks for contract employees and substitute staff from temporary agencies to be viewed, accepted, and copies maintained;
10. Permitting the Department to release information about disqualifying backgrounds to facilities that are covered by this regulation; and
11. Informing the person that a search of the central registry and criminal history record is being requested.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The public is expected to benefit from this regulation. The requirements that reflect the *Code*, and the other requirements, offer protection for children who receive state regulated child day care during a portion of the day. The facilities covered by the regulation will have increased flexibility to shift staff and use contract staff without obtaining repeat background checks, but all persons who remain at the same facility for three years or more will be required to resubmit checks every three years to assure availability of updated background information. Facilities and regulatory staff will benefit because the requirements are clearer and include all of the parties required to comply with the regulation.

The Department sees no disadvantage to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
10	In the definition of “Approved,” there is a reference to “Minimum Requirements for Family Day-Care Systems” (22 VAC-40-180).	The reference is changed to “Minimum Standards for Family Day-Care Systems (22 VAC-40-180). This is a technical change to correct a regulation title.

10*		Definitions of “living in” and “visit” are added to clarify when a person needs to obtain background checks. The additions are in response to public comment.
40 C 1	The sixth box, referencing repeat background checks for voluntary registration providers, under the “when” heading reads: “(The application for renewal must be receive by....)”	The sixth box under the “when” heading is changed to read: “The application for renewal must be received by.” This is a technical change to correct a spelling error.
40 C 1*		An explanation is provided after the table providing that persons with most recent checks before 1990 must have repeat checks by the end of December of the year in which this regulation has final approval. It is the end of December of the second year for those with most recent checks from 1991 through 1995. It is at the end of the third year for checks from 1996 to the present or five years since the dates of the last checks, whichever is the shorter period of time. This explanation is provided to clarify how repeat background checks will be initiated. It is in response to public comment about repeat checks.
40 C 2*		The same explanation is added after the second table and pertains to religious exempt centers. This explanation is provided to clarify how repeat background checks will be initiated. It is in response to public comment about repeat checks.
40 C 3 d		A provision is added to clarify that contract employees must adhere to the same repeat background checks requirements that apply to other employees. This provision is added in response to public comment.
40 C 4	The note at the bottom of the table reads: “This does not apply to applicants for family day systems, licensed child-placing agencies, and religious child day centers.”	The note at the bottom of the table is changed to read: “This does not apply to applicants for family day systems, licensed child-placing agencies, and religious exempt child day centers.” This is a technical change to reflect the manner in which this type of facility is referenced throughout the regulation.

<p>40 C 5</p>	<p>The introductory phrase reads “A person 14 years of age and older must have a search of the central registry:”</p>	<p>The introductory sentence is changed to read: “A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes....” This clarification is made to ensure that regulatory personnel will have access to this information and is made in response to public comment.</p>
<p>40 C 5*</p>		<p>An exception is added after the table to provide that “a person 14 years of age to 18 years of age who is placed in a foster home by a child-placing agency is not required to have a search of the central registry.” This does not preclude having the check, but does not require it. This provision recognizes the information available about youth before they are placed in a therapeutic foster home and is added in response to public comment.</p>
<p>40 C 8</p>	<p>The last phrase, pertaining to how long background checks remain valid, reads “iii was transferred to a facility owned and operated by the same employer or entity, unless there is a conviction or founded complaint of child abuse and neglect during that period.”</p>	<p>The final phrase is changed to read that background checks remain valid unless there is a “criminal conviction or a founded complaint of child abuse and neglect during that period.” This is a clarification that the provision refers to both criminal convictions and CPS findings. It is added in response to public comment.</p>
<p>50 B 4</p>	<p>“B 4” reads that “background checks remains valid at a facility if no more than 12 consecutive months have passed from when a person began a leave of absence from that facility, was terminated from employment at that facility, or was transferred to a center owned and operated by the same employer or entity.”</p>	<p>A provision is added to the beginning of “B 4” to read: “unless there is a criminal conviction or founded complaint of child abuse and neglect during that period. This clarifies that a recent offense pre-empts other validity provisions. It is added in response to public comment.</p>
<p>60 D</p>	<p>“D” begins with the statement that “An employee may continue to work, provide service, of live in....”</p>	<p>The phrase “No violation will occur and” is added to the beginning of this sentence. This is a technical change that does not change the meaning, but increases the clarity of the sentence.</p>

60 G	The second sentence of the last paragraph states: “If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22 VAC 40-191-50 C....”	The second sentence of the last paragraph is changed to read: “If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22 VAC 191-50 A....” This is a technical change to correct a regulation reference.
70 A 1	The sentence reads: “If a facility is among two or more owned by the same entity, the background check records may be kept at corporate headquarters....”	The sentence is changed to read: “If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters....” This is a technical change to eliminate a term that is not correct and substitute correct terms.
110 B	The sentence begins: “The waiver application must be submitted in typewritten form....”	The beginning of the sentence is changed to read: “The waiver application must be submitted in typewritten form or neatly printed....” This change acknowledges the general unavailability of typewriters.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
<p>Child-placing agency director</p>	<p>1.Shouldn't have to repeat background checks for foster families used by child-placing agencies, unless haven't had a child in placement for over a year, because agency is a regular and intimate presence (40 C 1).</p> <p>2.Repeat checks of children age 14-17 will provide little if any useful information; LCPA regulations already require that children in care be supervised by an adult at all times (40 C 5).</p> <p>3.Repeated checks will create very substantial additional costs for LCPAs (40 C1 and C 5).</p> <p>4.Would a home have to be closed if a child over 14 years of age with a CPS record is placed in a treatment foster home? (40 C 5)</p>	<p>1.Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p> <p>2.The LCPA regulations do not include this requirement.</p> <p>3.The additional costs are balanced by eliminating background checks for board members and for certain employees and volunteers.</p> <p>4.The regulation is revised to allow, but not require, a CPS search of a person 14-18 years of age who is placed in a foster home by a child-placing agency.</p>
<p>Director of child-placing agency</p>	<p>1.Repeat checks every three years will result in additional expenses for LCPAs; private agencies may very well expect to recover these expenses from the state through an increase in rates (40 C 1).</p>	<p>1.The additional costs are balanced by eliminating background checks for board members and for certain employees and volunteers.</p>

	<p>2.No studies or data provide evidence that children will be better off then they are now if there are repeat background checks every three years.</p> <p>3.The requirement for 14-year-olds to have a search of the central registry will result in increased costs; are unaware of any evidence that these checks will make family day, foster, or adoptive homes safer for children (40-C 5).</p> <p>4.Possibility that this proposed regulation would prevent a teenage mother who has a disqualifying CPS record from being placed in a treatment foster home (40 C 5).</p>	<p>2.Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p> <p>3.It is important to protect children from teenagers who may be in a caregiver role.</p> <p>4. The regulation is revised to allow, but not require, a CPS search of a person 14-18 years of age who is placed in a foster home by a child-placing agency.</p>
<p>Individual</p>	<p>This is great regulation. - We have to do everything we can to protect children from predators.</p>	<p>Thank you for the comment.</p>
<p>Three social workers at the same licensed child-placing agency</p>	<p>1.Opposes the re-checking every three years (40 C 1) and</p> <p>2.Opposes the CPS checks of those 14-18 (40 C 5) because they would be much more time consuming for the workers,</p>	<p>1. Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p> <p>2. The regulation is revised to allow, but not require, a CPS</p>

	<p>very difficult to monitor, more costly, and not empirically proven.</p>	<p>search of a person 14-18 years of age who is placed in a foster home by a child-placing agency.</p>
<p>Clinical director at child-placing agency</p>	<p>1.Opposes the re-checking every three years (40 C 1) and 2.Opposes the CPS checks of those 14-18 (40 C 5)because it would be much more time consuming for the workers, very difficult to monitor, most costly, and do not see where the change would benefit foster care children</p>	<p>1.and 2. Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p>
<p>Clinical director at child-placing agency</p>	<p>1.Opposes the re-checking every three years(40 C 1) and 2.Opposes the CPS checks of those 14-18 (40 C 5) because the re-checking will be difficult to track and monitor and consume too much of a case manager’s time. Also, it takes a long time to receive a fingerprint check back and that would cause innocent teens to “miss out” on a good emergency placement because of the need to wait on the result of the background check.</p>	<p>1.Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages 2. This agency must have elected to obtain national fingerprint checks; these are not required.</p>

<p>Supervisor at child-placing agency</p>	<p>1.Opposes re-checking every three years (40 C 1) and 2.Opposes the CPS checks of those 14-18(40 C 5) because more time-consuming for workers, very difficult to monitor, more costly; and not empirically proven</p>	<p>1.and 2.Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p>
<p>Family day care provider</p>	<p>Opposes the regulation because teenage nieces and nephews, parents, and brother could not come to visit [without getting background checks] and son could not come home for summer break [without getting background checks]</p>	<p>Regulation revised to provide a distinction between visiting and residing in a home.</p>
<p>Voices for Virginia’s Children</p>	<p>1.Supports requiring background checks of all adults residing in family day homes, foster homes, and homes of applicants to be adoptive parents. (40 A, C 1, C 2, C 3, and C 4). 2.Supports requiring CPS checks of persons 14 years of age and older residing in family day homes, foster homes, and homes of applicants to be adoptive parents (40 C 5). 3.Supports allowing the Department, registering, approving or other licensing authority to require a new background check upon suspicion of a barrier crime conviction, a felony conviction, or a founded complaint of child abuse and neglect (50 B 5) 4.Supports permitting the Department to release information about disqualifying background to facilities that are covered by this regulation (60 E) 5.Supports numerous efforts to explain and clarify those sections of the regulation that may have been confusing or unclear</p>	<p>1.Thank you for the comment. 2.Thank you for the comment. 3.Thank you for the comment. 4.Thank you for the comment. 5.Thank you for the comment.</p>

	<p>6.Recommends amending “sworn statement or affirmation” to include “convictions or determinations of delinquency for offenses that would be a felony if committed by an adult” (10).</p> <p>7.Recommends resubmission of background checks every two years instead of every three years for everyone (40 C).</p> <p>8.Requirements for contract agencies are unclear regarding how long background checks are good for contract employees – every six months or as long as the person contracts at the facility? Requests clarification (40 C 3) in town hall document.</p> <p>9.Requests additional inquiry into the criminal history of the juvenile by requiring that a juvenile reveal” any convictions or determinations of delinquency for offenses that would be a felony if committed by an adult” (40 C 5) in town hall document.</p> <p>10.Requests that a statement be added to 40 C 5 that a person 14 years of age and older must submit the central registry findings.</p>	<p>6.This is included in the definition of “offense” referenced in the definition of “sworn statement or affirmation.”</p> <p>7.The Department believes that the provision at 22 VAC 40-191-50 B 5 to allow the facility, department, or registering or approving authority to require a new background check relevant to suspicion that a person has an offense provides adequate additional protection.</p> <p>8.The regulation is revised to provide clarity.</p> <p>9.By implication, this would require persons under age 18 to complete a sworn statement or affirmation. The Code of Virginia requires only adults to reveal this information.</p> <p>10.The regulation is revised to reflect this recommendation.</p>
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	<p>11. Agrees with background checks information remaining valid for up through 12 consecutive months if a person is transferred to another facility owned and operated by the same employer, but does not agree when a person began a leave of absence or was terminated from employment because facility staff would be less likely to know of a conviction or CPS finding while the person was away from the facility (40 C 8 and 50 B 4).</p> <p>12. Believes a phrase needs to be changed to clarify that “conviction” refers to a criminal conviction (50 B 8).</p> <p>13. Notes that obtaining only state criminal conviction information may place children at risk (60 G).</p> <p>14. Recommends that the Department work with the Virginia State Police so that the current amount of \$2.00 paid by in-state residents for a firearms purchase should be applicable to child day care centers, family day homes, adult home care facilities, and foster and adoptive parent applicants of private child-placing agencies, thus reducing the cost of criminal history record checks.</p> <p>15. Recommends that nationwide criminal history record checks be made available to child care centers and family day homes at the same cost to which they are available to purchasers of firearms (\$2.00)</p>	<p>11. Thank you for the comment. The Department believes there would be sufficient protection for children.</p> <p>12. The regulation is revised to provide this clarification.</p> <p>13. At the present time, the Code of Virginia requires obtaining state criminal conviction data only.</p> <p>14. and 15. The \$2.00 charge is a Code of Virginia provision for gun purchases only.</p>
<p>Family day care provider</p>	<p>1. Instead of having repeat background checks (40 C 1), it would be better to spend time and money on a requirement to get out-of-state background checks as needed.</p>	<p>1. At the present time the Code of Virginia requires obtaining state criminal conviction data only.</p>

	<p>2. Agrees with provision that licensing specialists can still request that a provider update the background check, with little cause to do so</p> <p>3. Agrees with the requirement for background checks at the time of the application</p> <p>4. Need to make childcare providers’ jobs easier, not bog them down in paperwork and regulations</p>	<p>2. The proposed regulation requires that there is reason to suspect that a person has a disqualifying background.</p> <p>3.Thank you for the comment.</p> <p>4.It is important to balance the protection of children and support of providers.</p>
<p>Virginia Alliance of Family Child Care Associations</p>	<p>Does NOT support repeated background checks every 3 years for licensed family day homes (40 C 1) because:</p> <ol style="list-style-type: none"> 1. It would impose an unnecessary, financial burden on many Licensed Family Day Homes; 2. The high turnover rate and current requirements mean that the majority of providers and adults living in the home already have current background checks; 3. The Department performs two unannounced visits per year, during which Licensing Specialists inquire about the background checks status of other adults living in the home; 4. Licensing Specialists have other ways to find out if a person as an offense, and may request an additional background check; 5. Childcare workers must obtain new background checks if it has been longer than 6 months from the previous check, and management may also request updated background checks at their discretion; 6. High-security clearances are only required every 5 years; 7. This will increase the cost of child care to those least able to afford it; 	<p>Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p>

	<p>8. There would be time and travel burdens such as the central registry requiring notarization and the criminal history check requiring a money order or business check; and</p> <p>9. The requirement would deter persons from entering the field or, if in the field, from becoming licensed.</p> <p>If the periodic background checks requirement moves forward, change the schedule to every 7-10 years.</p>	
<p>Foster Family-Based Treatment Association – VA Chapter</p>	<p>1. Oppose licensed child-placing agencies being included in the regulation (40 A).</p> <p>2. Support the Department’s interest in devising “changes that protect the health, safety and welfare of children”</p> <p>3. Oppose repeat checks every three years because it will result in additional expenses for LCPAs, the expenses will be passed to the state through increased rates, and not aware of any studies/data providing evidence that children will be better off (40 C.1).</p> <p>4. Oppose checks of 14-18-year-olds because there will be increased cost, unaware of evidence that this requirement would make foster or adoptive homes safer for children, and it would prevent treatment foster care and other programs from serving certain foster children (40 C.5).</p> <p>If child-placing agencies are not removed from the regulation, request a public hearing to explain views further.</p>	<p>1. The Code of Virginia places licensed child-placing agencies within the purview of this regulation.</p> <p>2. Thank you for the comment.</p> <p>3. Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p> <p>4. It is important to protect children from teenagers who may be in a caregiver role.</p> <p>The Department has elected to solicit written public comment.</p>

<p>Licensed family day home provider</p>	<p>1. Requests repeat background checks be changed to every ten years (40 C 1).</p> <p>2. Requests that anyone living in a home who is physically handicapped and not able to care for themselves should be exempt from these requirements.</p> <p>3 . Need a group health insurance plan for licensed [family day homes].</p>	<p>1.Data is not available that indicates that persons who have an initial check will not subsequently have an offense. Three years was selected to protect children.</p> <p>2.This recommendation would require a change in the Code of Virginia</p> <p>3.This suggestion is outside the purview of this regulation, but has been forwarded to the appropriate Division for consideration.</p>
<p>Licensed family day home provider</p>	<p>Opposes updating background checks every three years; suggests every 5-10 years (40 C.1) because it would be a monetary and time strain.</p>	<p>Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p>

<p>Treatment foster care and family services agency</p>	<p>1. Opposes repeat background checks because of the cost and there would be a violation if a time frame is not met (40 C 1).</p> <p>2. Opposes background checks on 14-18-year-olds because of difficulty in tracking, financial hardship, and availability of foster homes (40 C 5) Also opposes because a home could not be certified to care for an adolescent mother who may have a founded CPS [finding].</p> <p>3. The proposal to eliminate the background checks requirement for employees, board members, volunteers who do not come in contact with or supervise children is not good practice (40).</p>	<p>1. Data is not available that indicates that persons who have an initial check will not subsequently have an offense. The regulation is revised to provide for compliance in stages.</p> <p>2. It is important to protect children from teenagers who may be in a caregiver role.</p> <p>3. This revision is required by the Code of Virginia.</p>
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All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Title		“Regulation for Criminal Record Checks for Child Welfare Agencies”	“Background Checks for Child Welfare Agencies” Rationale: Reflect the sworn statement or disclosure requirement that was part of the current regulation, add Code-mandated searches of the central registry, and use the term “background checks” as found in the Code of Virginia.

<p>10</p>		<p>Definition of “criminal history record request”</p> <p>Definition of “officer of the board”</p> <p>Definition of “applicant for licensure or registration”</p> <p>Definition of “barrier crimes”</p> <p>Definition of “central criminal records exchange”</p> <p>Definition of “criminal record report”</p> <p>Definition of “employee”</p> <p>Definition of “facility”</p>	<p>Deleted. Rationale: It is inadequate because it refers to only one of the options allowed for obtaining criminal information.</p> <p>Deleted. Rationale: It is not needed because the Code of Virginia no longer requires an officer to obtain background checks. Changed to delete, and separately define “agent” Rationale: The definition complies with the Code of Virginia and is specific for the various categories of providers.</p> <p>Changed from a general description of barrier crimes, and the list in effect in 1995, to the current list of convictions identified in the Code of Virginia Rationale: The definition complies with the Code of Virginia.</p> <p>Changed to delete information about the Virginia State Police Rationale: Information about the Virginia State Police now appears in section 2, where it is more functional.</p> <p>Changed to “criminal history record report” to conform to current Code of Virginia language. Information about the data provided is moved to section 20 Rationale: The new definition complies with the Code of Virginia and the moved information is more functional in the text of the regulation.</p> <p>Simplified, and details about which employees are covered are moved to, and expanded in 40. Per recodification changes, only an employee who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children is required to obtain background checks. Rationale: The new definition complies with the Code of Virginia.</p> <p>Changed to: specify what a child welfare agency is and mirrors the clarification in the Code of Virginia that family day homes approved by family day systems</p>
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		<p>Definition of “parent-volunteer”</p> <p>Definition of ”sworn disclosure statement”</p> <p>Definition of “volunteer”</p> <p>Definitions of “board,” “commissioner,” ”department,” “department representative,” “living in,” “local agency,” “may,” “must,” “must not,””22 VAC,” and “visiting”</p> <p>Definitions of “contract agency” and “contract employee”</p> <p>Definitions of “criminal history record check” and “criminal history record report”</p> <p>Definition of</p>	<p>and foster and adoptive homes approved by child-placing agencies are subject to the regulation. It also includes those seeking a waiver in order to be a facility. Rationale: The new definition complies with the Code of Virginia and is clearer. Changed by updating Code of Virginia references</p> <p>Rationale: The new definition complies with the Code of Virginia.</p> <p>Renamed “sworn statement or affirmation,” adds disclosing founded complaint of child abuse or neglect and, for family day homes, knowledge of a sex offense conviction. Code of Virginia references are also update.</p> <p>Rationale: The new definition complies with the Code of Virginia.</p> <p>Changed to mirror recodification changes that only “a person who provides services without pay and who is alone with a child or children in the performance of his duties” must obtain background checks</p> <p>Rationale: The new definition complies with the Code of Virginia.</p> <p>Added</p> <p>Rationale: Adding the definitions makes the document more readable for persons unfamiliar with state government. “May,” “must,” and “must not” are precisely defined and allow elimination of the term “shall” that is not used in everyday speech.</p> <p>Added</p> <p>Rationale: These definitions provide a distinction between certain occasional employees and the “contracting organization” referenced in the Code of Virginia.</p> <p>Added</p> <p>Rationale: These definitions explain how the Virginia State Police checks on crimes and what the agency does after checking the criminal history record.</p> <p>Added</p>
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		<p>“disqualifying background”</p> <p>Definition of “other felony”</p> <p>Definitions of “child day program” “child-placing agency,” “child welfare agency” “family day home,” “family day system,” “independent foster home,” “offense,” “registered,” and “registered family day home”</p> <p>Definition of “approved”</p> <p>Definition of “background checks”</p> <p>Definition of “central registry”</p> <p>Definition of “central registry finding”</p> <p>Definition of “good moral character and reputation”</p>	<p>Rationale: This definition explains the consequence of an offense and clarifies at what point in the appeal process a person is considered to be the subject of a founded complaint of child abuse or neglect. It makes the link between an offense and the ability to own, operate, work at, or volunteer at a child welfare agency.</p> <p>Added</p> <p>Rationale: The full explanation, as found in the Code of Virginia, is included here in order to not include it in the text of the regulation every time the regulation refers to conviction for any felony in the last five years that is not a barrier crime felony.</p> <p>Added</p> <p>Rationale: Adding these definitions makes the regulation more usable, and use of these definitions from the Code of Virginia refuses confusion of readers who compare the regulation to the Code of Virginia.</p> <p>Added</p> <p>Rationale: The definition indicates criteria for this status so the reader will know who is referenced.</p> <p>Added</p> <p>Rationale: The definition mirrors the new title for Article 3 of Title 63.2, Chapter 17.</p> <p>Added</p> <p>Rationale: The definition explains the source of a central registry finding.</p> <p>Added</p> <p>Rationale: The definition provides an explanation of the Code of Virginia phrase “information from the central registry.”</p> <p>Added</p> <p>Rationale: The definition explains what is meant by the Code of Virginia phrase</p>
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		<p>Definition of “involved in the day-to-day operations”</p> <p>Definition of “licensed”</p> <p>Definitions of “living in” and “visit”</p> <p>Definition of “religious exempt center”</p> <p>Definition of “search of central registry”</p> <p>Definition of “sex offense felony for family day homes”</p>	<p>“good moral character and reputation” and will allow a more consistent interpretation of the phrase. Added Rationale: The definition explains what is meant by the Code of Virginia phrase “involved in the day-to-day operations” and will allow a more consistent interpretation of the phrase.</p> <p>Added Rationale: This definition makes readers aware of the categories of providers the Code of Virginia is referencing when the word “licensed” is used.</p> <p>Added Rationale: Adding these two definitions clarifies that background checks are not needed for a short-term stay (visit) in a family day home.</p> <p>Added Rationale: This definition complies with the Code of Virginia use of the term and prevents subjective interpretation of what facilities are religious exempt.</p> <p>Added Rationale: The reader will understand what “search of the central registry” means.</p> <p>Added Rationale: The addition makes the regulation comply with a Code of Virginia requirement.</p>
20		Legal base and applicability	<p>Deleted Rationale: This section in the current regulation is deleted because it summarizes background checks requirements as of 1995. The proposed regulation is reorganized by stage in the background checks process and references the current Code of Virginia.</p>
	20		<p>This new section adds search of the central registry as a background check, as required by the Code of Virginia, explains the three background checks, and explains how to obtain forms and who affirms the accuracy of the</p>

			<p>information Rationale: The new section is important because neither the Code of Virginia nor the current regulation explicitly lists what the checks are and how accuracy of the information is determined.</p>
30	40 B and C	<p>Provides that sworn disclosure shall be completed prior to employment or commencement of volunteer service</p>	<p>Moved to 40 B and C. A provision is added requiring disclosure of any conviction or being the subject of any pending criminal charges. Rationale: The provision is included with other application requirements, uses Code of Virginia terminology, and complies with current Code of Virginia requirements.</p>
	10; definition of “sworn statement or affirmation”	<p>Requires that the sworn statement be attached and filed with the criminal record report Includes the stipulation that making a false statement on a sworn disclosure is a Class 1 misdemeanor</p>	<p>Deleted Rationale: The requirement is unnecessary.</p> <p>Moved Rationale: Inclusion in the definition clarifies that it applies to anyone required to submit a sworn statement or affirmation.</p>
40	40 B and C		<p>“B” and “C” add the Code of Virginia-mandated searches of the central registry for all persons required to submit the results of background checks Rationale: This addition reflects Code of Virginia requirements and provides greater protection to children. “B” lists the background checks required at the time of application and “C” lists the background checks required after initial licensure, registration, approval, or receipt of religious exemption status Rationale: The regulation is clearer by providing all requirements at a specific phase of regulation together.</p>
40 A	40 B	<p>Requirement that a criminal record report shall be made available to the Commissioner’s representative prior to issuance of an initial license or registration</p>	<p>Term is changed to “criminal history record report” and moved to a table in 40 B Rationale: The information is included at the same place as other initial application requirements.</p>

	40 B 1		<p>Rationale: Misinterpretation of who the Code of Virginia requires to obtain background checks at the time of application for licensure or registration. Provision added that the other adult living in a home requesting approval by a family day system must obtain background checks at the time of application for approval.</p>
	40 B 1		<p>Rationale: The addition provides consistency with the Code of Virginia. Provision added that any agent at the time of application who is or will be involved in the day-to-day operations of the child welfare agency, or who is or will be alone with, in control of, or supervising one or more children must submit background checks upon application for licensure or registration</p>
	40 B 1		<p>Rationale: The addition makes the regulation compliant with the Code of Virginia. Because “agent” is defined in the proposed regulation, the reader will know to whom the Code of Virginia is referring regarding being alone with, in control of, or supervising one or more children.</p>
	40 B 2		<p>Provision added that any operator of a family day home requesting approval by a family day system must submit background checks upon request for approval by a family day system</p> <p>Rationale: This provision provides regulatory language to support a Code of Virginia requirement.</p> <p>Provision added that any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center, except a parent-volunteer, must provide documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check with the written request for religious exemption status</p> <p>Rationale: The Code of Virginia</p>

	<p>40 C 1</p>		<p>provisions for religious exempt centers are now in the regulation. The provision informs the reader of the Code of Virginia caveat that only those persons expected to be alone with one or more children are required to obtain the background checks.</p> <p>Provision added that: a) a sworn statement or affirmation must be submitted whenever a new person is designated as an applicant, licensee, registrant, approved individual, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children and b) the search of the central registry and criminal history record check must be completed before the end of 30 days after the change</p> <p>Rationale: This clarifies that the requirements for an applicant, licensee, registrant, approved individual, and agent applies to anyone who fits any of those categories at any time.</p>
	<p>40 C 2</p>		<p>The current regulation contains no provisions for religious exempt centers or for re-checking the background of anyone who retains the same status at the same facility. Provision added that any employee, volunteer or any other person who is expected to be alone with one or more children enrolled in a religious exempt child day center, except a parent-volunteer, must provide now background checks before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report</p> <p>Rationale: This provision will reduce the risk that an individual with a recent disqualifying background will continue to be in proximity to children in a regulated facility.</p>
	<p>40 C 1</p>		<p>Provision added to require an additional</p>

	<p>40 C 3</p>		<p>search of the central registry for a foster parent or other adult member of the household, if child-placing agency staff believe it is necessary Rationale: There will be the capacity for child-placing agencies to provide additional protection to vulnerable children placed in foster or adoptive homes. Provision added that independent contract employees, and contract employees hired by a contract agency, who will be involved in the day-to-day operations of the facility or will be alone with, in control of, or supervising one or more children to obtain background checks in one of two ways: use the method used for everyone else or a) view the original background checks, b) accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at specific facilities, and c) make copies, keep them at the facilities, and write on the copies that they are photocopies of originals that facility staff verified. Rationale: This provision recognizes the unique employment status of an independent contractor or contracted agency by allowing facilities the choice of applying the same criteria for background checks that the regulation requires for all other employees or viewing and keeping copies. It also allows facilities the choice of accepting background checks results that are less than six months old, rather than requiring new checks if the current ones are more than 90 days old. Provision added requiring that any applicant, licensee, approved individual, agent, employee, volunteer, and person living in the home who is required to have background checks must acquire</p>
	<p>40 C 1</p>		

	<p>40 C 1 and C 2</p> <p>40 C 3</p> <p>40 C 4</p>		<p>them every three years since the dates of the last checks.</p> <p>Rationale: Protection for children is increased because persons covered by the regulation must re-submit the background checks every three years, except those who are covered by the voluntary registration two-year resubmission requirement. The rationale for requiring resubmission every two years for voluntary registration renewals is that these facilities are not monitored with any frequency by the contracting agency or the Department, meaning the likelihood of discovery of a recent problem would be further reduced. An explanation is added providing that persons with most recent checks:</p> <ul style="list-style-type: none"> a) in 1990 or earlier must have repeat checks by the end of December of the year in which this regulation has final approval; b) from 1991 through 1995 must have repeat checks by the end of December of the second year; and c) from 1996 to the present, or five years since the dates of the last checks, whichever is the shorter period of time <p>Rationale: This provision clarifies how repeat background checks will be initiated.</p> <p>Provision added that contract employees must adhere to the same repeat background checks requirements that apply to other employees.</p> <p>Rationale: This provision makes clear that the regulation is equally applied to all employees.</p> <p>Provision added that an 18-year-old living in the home of an applicant, a licensed or registered family day home provider, a foster home approved by a licensed child-placing agency, an independent foster home, or an adoptive home approved by a licensed child-placing agency, until the adoption is</p>
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<p>40 F</p>	<p>40 C 4</p> <p>40 C 5</p> <p>40 C 5</p> <p>40 C 6 and C 7</p>	<p>Criminal record reports shall not be accepted if dated more than 90 days before date of employment, volunteer service, or date of application for approval as a foster home, adoptive home, or family day home</p>	<p>final, is an adult and must comply with background checks requirements. Rationale: The reader will understand how to apply to persons who become 18 years old the Code of Virginia requirement that adults obtain background checks. Caveat added that background checks requirements for 18-year-olds does not apply to family day systems, licensed child-placing agencies, and religious exempt child day centers. Rationale: These facilities do not have anyone living in them. Provision added that persons 14 years of age and older living in homes to which this regulation applies must have a search of the central registry and make the information available for regulatory purposes. Rationale: There will be consistent application across regulated homes of the requirements for searches of the central registry as found in the regulation entitled <u>Minimum Standards for Family Day homes</u>. Exception added that a person 14 years of age to 18 years of age who is placed in a foster home by a child-placing agency is not required to have a search of the central registry; doesn't preclude, but does not require it. Rationale: This exception recognizes that information available about youth before they are placed in a therapeutic foster home should be sufficient to provide for the safety of other children in the home. Changed to provide that "the Department may not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home, or approval of a family day home</p>
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			<p>or foster or adoptive home. The exception for contracting agencies, at 40 C 3 is noted.</p> <p>Rationale: This requirement adds the Code of Virginia-required sworn statement or affirmation and central registry finding to the regulation and adds all facilities subject to this regulation.</p>
50 A	40 B 3	<p>Contract agencies and facilities staff shall accept only original criminal record reports</p>	<p>Changed term to “criminal history record report” and provide that facility staff must have viewed an original criminal history record report from a contract agency or contract employee and then made and kept a copy on record if they do not choose to keep the original on site</p> <p>Rationale: The regulation reflects Code of Virginia terminology and facility staff must still see an original criminal history record report, but there is a convenience for contract employees or contract agencies, who may keep the original</p> <p>Deleted</p> <p>Rationale: In the proposed regulation, at 40 B 3, temporary agencies are considered contract agencies and expected to conform to contract agency provisions. Since the letter is deleted, maintenance and retention requirements are not needed.</p>
50 A		<p>Allows facilities using temporary agencies to have a letter that verifies receipt of the criminal record report within 21 days of employment, requiring that the report is on file at the temporary agency, and requiring that the report does not contain barrier crimes; same maintenance and retention requirements as criminal record report</p>	
50 B	50 B 5	<p>Contract agency or facility staff must match name, social security number and date of birth to some other form of identification, and a new criminal history record request must be made if any information does not match</p>	<p>Deleted</p> <p>Instead, the facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is a reason to suspect that a person who has submitted acceptable background checks, as required by the regulation, has a) a barrier crime conviction, b) a felony conviction that is not a barrier crime within the last five years or c) a founded</p>

<p>50 C</p>	<p>40 C</p>	<p>Repeat background checks are not needed “as long as the employee, volunteer, foster parents, or family day home provider remains in continuous service at the same facility”</p>	<p>complaint of child abuse and neglect Rationale: The Virginia State Police has procedures for any individual who believes his criminal history record report is incorrect. The change provides for instances in which there are a question about a satisfactory background check. Changed to require repeat background checks “before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report”; expanded to include any applicant, licensee, approved individual, agent, employee, volunteer, and person living in the home who is required to have background checks Rationale: The regulation includes all Code of Virginia-affected parties, includes all three required background checks, and increases protection to a vulnerable population.</p>
<p>50 D</p>	<p>50 B 3</p>	<p>Requirement that a new criminal record report and sworn disclosure statement are required when an individual terminates employment or ceases volunteer work at one facility and begins work at another facility</p>	<p>Moved, and changed to reflect the new Code of Virginia terminology of “criminal history record report” and “sworn statement or affirmation”; an addition that the person must be permitted to take the report or reports with him, but the facility must keep a copy of any report a person takes and write on it that it is a copy and the original of any criminal history record report was verified Rationale: The language is consistent with the Code of Virginia, is placed where other requirements are, and is a cost-savings to anyone required to furnish background checks within 90 days. The impact on child safety is minimal because the effective time period is only three months.</p>
<p>50 D</p>	<p>40 C 8</p>	<p>“When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of now</p>	<p>Moved, and changed to allow 12 months from when a person: a) began a leave of absence, b) was terminated from employment at that facility, or c) was transferred to a facility owned and</p>

		<p>more than 30 days, a new criminal record report shall not be required”; criminal record reports for someone whose period of separation does not excel six consecutive months.</p>	<p>operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period. Rationale: The information is now easier to find because it is located in the section describing when the three background checks are required. It will be a cost savings to employers because they will be able to bring back former employees, or move them to other facilities they own and operate, within a year without having to obtain another set of background checks, unless there is knowledge of a criminal conviction or a founded complaint of child abuse and neglect during that period.</p>
60 A	70 A	<p>Provides that “the original report shall be maintained at the facility where the person is employed, volunteers or is approved.”</p>	<p>Expanded to provide that background checks records must be kept at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children Rationale: All required background checks and are included and confusion is avoided by listing those affected by the requirement.</p>
60 A	70 A 1	<p>Provides that the original criminal record report be maintained at the facility where the person is employed, volunteers or is approved.</p>	<p>Changed by providing a choice when a facility is among two or more owned by the same entity: either kept at corporate headquarters or at the facility where the person is working; in either case they must be made available to a Department representative upon request. Rationale: The Department representative has access to the records, but the owner can decide which is the best place to keep them.</p>
70		<p>Officers of the board must provide criminal record reports, a new report is not required if the officer changes</p>	<p>Deleted Rationale: The Code of Virginia no longer requires background checks from board members.</p>

		position, and officers of advisory boards are not required to obtain criminal record reports.	
	50 50 A	This is a new section.	<p>Section added to provide an explanation of satisfactory background checks, including satisfactory sworn statement or affirmation, satisfactory central registry finding, and satisfactory criminal history record check report, and no other knowledge of an unsatisfactory background; also includes caveats from the Code of Virginia definition of “offense”: criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth and convictions also include equivalent convictions in other states.</p> <p>Rationale: This information lessens possible misinterpretation of background checks results.</p> <p>Provision added that a facility must view the original report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee hired by a contract agency begins providing service at the facility.</p> <p>Rationale: Providing this information lessens the likelihood for misinterpretation of a satisfactory report.</p> <p>Provision added that a child-placing agency may approve as an adoptive parent an applicant convicted of not more than one misdemeanor of assault and battery, not involving abuse, neglect or moral turpitude, provided ten years have elapsed following the conviction.</p> <p>Rationale: This addition achieves compliance with the Code of Virginia.</p> <p>Provision added that, when minors turn 18, they must comply with background</p>
	50 B 1		

	<p>50 B 2</p>		<p>checks for adults. Rationale: The provision provides clarity and is in conformance with the rest of the regulation. Provision added that operators must submit new background checks as part of the two-year renewal application packages for voluntarily registered family day homes. Rationale: The addition is in conformance with the regulation <u>Voluntary Registration of Family Day Homes</u>.</p>
	<p>50 B 3</p>		<p>Provision added that allows a person who leaves a facility to take the criminal history record report or central registry check finding with him, if the report or finding is less than 91 days old. In this case, the facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified. Rationale: This provision provides a cost savings to individuals and facilities, while ensuring that adequate documentation is maintained at all facilities.</p>
	<p>50 B 4</p>		<p>Provision added that a background check remains valid at a facility as long as no more than 12 consecutive months have passed from when a person began a leave of absence from that facility, was terminated from employment at that facility, or was transferred to a center owned and operated by the same employer or entity, unless there has been a criminal conviction or a founded complaint of child abuse and neglect in the meantime. Rationale: This allowance is convenient for facilities that use repeat seasonal volunteers and employees, or that want to shift staff from site to site. It is also a convenience to any individual who wants to return to a previous facility.</p>

	<p>70 B</p>		<p>facility designee has viewed and verified the original sworn statement or affirmation and criminal history record report.</p> <p>Rationale: This provision gives access to background checks information by Department representatives, while allowing centralized record-keeping at an individual’s primary work site. Note that the Code of Virginia allows a copy of the central registry check finding.</p> <p>Provisions added that the contracting organization must keep: a) the original criminal history record report and sworn statement or affirmation for the voluntarily registered provider, b) the original criminal history record report and the provider keeps: a) either the original or a copy of the central registry finding for any provider assistant, substitute provider, and any person aged 14 and older residing in the home and b) either the original or a copy of the central registry finding for any provider assistant, substitute provider, and any person aged 14 and older residing in the home.</p> <p>Rationale: These provisions clarify what information contracting organizations must keep and what information is the responsibility of voluntarily registered family day home providers. This will avoid confusion for providers and contracting organization staff about who is to keep what information.</p> <p>Maintenance of records requirements are added for family day systems and family day homes approved by family day systems: a) the requestor keeps the original criminal history record check and the original or copy of the child protective services central registry check (the other party keeps copies) and b) the family day system always keeps the original sworn disclosure statement or affirmation.</p>
	<p>70 C</p>		

	90 C		<p>Rationale: the provision is consistent with the Code of Virginia.</p> <p>Provision added that, with the exception that applies to prospective adoptive parents, no person guilty of a barrier crime may operate or volunteer or work at a facility governed by this regulation</p> <p>Rationale: This section clarifies and emphasizes that barrier crimes disqualify a person from operating, volunteering at, or working at a child day center or any facility under the authority of this regulation.</p>
	100	This is a new section	<p>Provision added that a person must request a waiver application package from the Licensing Regional Office that serves the area where the person with the disqualifying background check lives or wants to operate or volunteer or work at a facility covered by this regulation, except that a person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Division of Licensing Programs of the Department</p> <p>Rationale: The reader can quickly tell how to obtain a waiver application package.</p> <p>Provision added to notify that there is a waiver application fee.</p> <p>Rationale: The reader knows there is a cost involved in applying for a waiver.</p> <p>Provision added that the Commissioner acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.</p> <p>Rationale: There is assurance for the requester that the Department received the application package and that it appears that the necessary information is included.</p>
	110 A	This is a new section	Provisions added to describe the contents of a waiver application; the waiver

	<p>110 B</p>		<p>application must be personally prepared Rationale: The reader is informed that no one can prepare an application on behalf of someone else. Provision added that the waiver application must be typewritten or neatly printed and must include a statement that the request was solely and personally prepared by the requestor, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else, except that the document may be typed by another person. Rationale: The information will be legible because it will be typed or neatly printed. Provision added that the application must include a statement that the requester understands that the waiver will be available for inspection by the public, that the facility will provide a copy of the waiver to every current and future parent and guardian of children in care, and that the information in the waiver application package will be made available by the Commissioner to any person upon request, if the waiver is granted. Rationale: This provision complies with a Code of Virginia requirement. Provisions added that the application package must also include: a) personal and employment information and b) if the request is for a family day home, all members of the household and their relationship to the requester. Rationale: This information is needed to assist the Commissioner in determining if the requester, or other person with a disqualifying conviction, is now a person of good moral character and reputation, as required by the Code of Virginia. Other waiver application requirements are added: a) a factual account of the crime of the person with the disqualifying conviction, b) the current status and</p>
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	<p>110 C</p>		<p>history with justice systems of the person with the disqualifying conviction, c) other information the person with the disqualifying background wants the Commissioner to consider in evaluating the waiver request, and d) an explanation of why the waiver should be granted</p> <p>Rationale: The requester has the opportunity to provide any information he believes is pertinent. The Commissioner has appropriate justice system information from which to evaluate the request for a waiver.</p> <p>Provision added to identify the seven required attachments: a non-refundable check, made payable to the “Treasurer of Virginia” and a) “Current Employment and Employment History Form,” b) copy of the current sworn statement or affirmation, c) copy of the current criminal history record report, d) copy of all necessary documents verifying the person’s statements regarding part and current involvement with adult or juvenile justice systems within or outside the Commonwealth, e) at least four references from disinterested parties who will vouch for the “good moral character and reputation” of the person with the disqualifying conviction, f) the Sponsoring Agency Statement, and g) a notarized signature page.</p> <p>Rationale: The Commissioner will have sufficient information to determine if the person is of good moral character and reputation and the waiver would not adversely affect the safety and well-being of children.</p> <p>Provision added that, if the waiver application is for another adult living in a family day home, the Department must conduct a home study to assess the safety of children placed in the home, and determine that the offender is now a person of good moral character and reputation.</p>
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			<p>Rationale: A Code of Virginia requirement is included.</p>
	120 A		<p>Provision added that the Commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.</p> <p>Rationale: This provision demonstrates the significance of waiver decisions and assures decision-making at a high level within the Department.</p> <p>Note added that the final decision is based on the: a) content of the waiver application package, b) nature of the conviction or convictions and relevance to decision criteria, c) extent and pattern of criminal history or child abuse and neglect, including the person’s age when the act occurred, and d) in the case of prospective foster parents for a licensed child-placing agency, a review of the criminal record requirements of the <u>Safe Families and Adoption Act of 1997</u> to determine if the waiver would be permitted.</p> <p>Rationale: The provision ensures that decisions will be made based on uniform criteria.</p>
	120 B		<p>Provision added that the applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.</p> <p>Rationale: This provision allows a thorough investigation to be carried out and increases the likelihood that all relevant information will be reviewed.</p>
	120 C		<p>Provision added that the Commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.</p> <p>Rationale: This provision allows a thorough investigation to be carried out and increases the likelihood that all relevant information will be reviewed.</p>

			<p>stipulations, if any; e) criminal conviction for which the waiver was granted; f) date of criminal conviction; g) relevant court and location; h) sentence served; i) signature of Commissioner, or designee; and j) date.</p> <p>Rationale: This provision provides a consistent format for all waivers.</p>
	140 A	This is a new section	<p>Provision added that the person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.</p> <p>Rationale: This provision allows the Department to respond to changed circumstances.</p>
	140 B		<p>Provision added that the Commissioner may revoke a waiver if, after investigation, he determines that: a) the waiver application contained false, deceptive, or misleading information; b) the terms, conditions, or stipulations of a waiver have been violated; or c) new or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.</p> <p>Rationale: This provision allows the Department to respond to changed circumstances.</p>
	140 C		<p>Provision added that the Commissioner will inform the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.</p> <p>Rationale: This provision guards against capricious decision-making.</p>
	140 D		<p>Provision added to explain that a waiver automatically expires when: a) the person terminates the approved arrangement with the sponsoring facility, b) five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted, or c) the other adult living in a family day home was the reason for the waiver and the</p>

			<p>other adult no longer lives in the home Rationale: The provision avoids misunderstandings about expiration of waivers.</p>
	150 A	This is a new section	<p>Provision added that notification about waivers is conducted in accordance with agency policy. Rationale: The provision allows for consistency in agency policy.</p>
	150 B		<p>Provision added that a facility must: a) post in a conspicuous place on the premises any waiver granted by the Department and b) notify in writing every parent and guardian of children in its care of any waiver granted for its operators, employees, volunteers, or adult family members living in the home Rationale: This section contains the regulation to comply with the Code of Virginia requirement for public notification. Because of the detail provided, potential misunderstanding is avoided.</p>
	150 C		<p>Provision added to clarify that notification of parents and guardians includes those whose child is placed with a foster child, whose child is to be placed with an adoptive family, and parents and guardians who, in the future, will enroll children. Rationale: This section contains the regulation to comply with the Code of Virginia requirement for public notification. Because of the detail provided, potential misunderstanding is avoided.</p> <p>Provision added that any facility employing staff, allowing volunteers, operated by a person, or a family day home with another adult whose disqualification has been waived by the Commissioner must post a copy of the waiver in a conspicuous place on the premises. Rationale: This provision complies with the Code of Virginia requirement for</p>

			public notification.
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There will be minimal impact on the authority and rights of parents in the education, nurturing, and supervision of their children. Family day home providers will be required to obtain central registry findings for any children, aged 14 and older, living in their homes. Similarly, background checks requirements might impact economic self-sufficiency, self-pride, and responsibility for oneself, one’s spouse, and one’s children and/or elderly parents, as well as disposable family income by requiring searches of the central registry for all persons in the household, aged 14 and older. The \$5.00 cost per person is minimal. There would be no impact on the marital commitment.